

STATE OF NORTH CAROLINA

COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

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**ADMINISTRATIVE ORDER REGARDING
JURY TRIAL RESUMPTION PLAN**

GASTON CO., C.S.C.

BY

Pursuant to Emergency Directive 22 issued on July 16, 2020 by the Honorable Cheri Beasley, Chief Justice of the Supreme Court of North Carolina, the undersigned Senior Resident Superior Court Judge for Superior Court Judicial District 27A hereby establishes the following jury trial resumption plan for Gaston County, North Carolina.

I. DESCRIPTION OF COURTROOM FACILITIES

The present Gaston County Courthouse became our justice facility in June 1998. Four district court courtrooms are located on the second floor and are used for first appearance hearings, juvenile proceedings, domestic violence hearings, and small claims trials. Courtroom 2D contains a jury box. There are also four district court courtrooms on the third floor, used for district criminal, district civil, traffic, and family court proceedings. All district courtrooms on the third floor contain jury boxes, and are used daily.

The fourth floor houses four courtrooms: 4A, 4B, 4C, and 4D. All four were constructed and equipped to try jury cases, and contain conventional jury boxes. Two of them, 4B and 4C, are used virtually every week. Courtroom 4C is almost always used for criminal cases. Civil trials are usually tried in courtroom 4B. Courtroom 4B is also used for criminal jury and non-jury business. Courtroom 4D is available for special sessions, holdover trials, Rule 2.1 civil trials, and North Carolina business court proceedings.

A number of years ago, superior court agreed to allow district court to regularly use court room 4A, with the understanding that if superior court needs that facility for a session or sessions of court, the courts will work together to best address space needs for that week.

During the planning, design and construction of the current courthouse, the trial court administrator, county manager, and other officials, as well as the undersigned superior court judge, discussed and agreed that if an extraordinary need for a jury trial arose that required the use of a facility much larger than any of our existing courtrooms, the county would allow that the facility in which the county commissioners meet, known as the Harley B. Gaston, Jr. Public Forum, to be used for the purpose of that trial. It was understood and agreed that the use of the public forum for jury trials would be orchestrated in a way that would not interfere with county business. Indeed, we have utilized this venue for a superior court trial some time ago, when the Honorable Nathan Poovey presided over a jury trial in this facility.

On 21 May 2020, the Chief Justice issued Emergency Directive 12 directing senior resident superior court judges to establish the maximum capacities of all courtrooms in their districts

when allowing for social distancing of at least six feet in every direction. All district and superior court proceedings which have occurred since then, all of which of course being of course non-jury proceedings, have strictly followed the Chief Justice's mandate.

None of the conventional courtrooms in the Gaston County Courthouse are large enough to accommodate a jury trial in compliance with the directive of the Chief Justice. Therefore, once we are allowed to resume jury trials, we propose to the Chief Justice that they be conducted in the public forum of our courthouse, until such time as we are allowed to resume using our existing courtrooms for the trial of jury cases.

At all times, everyone in these jury proceedings will be wearing an appropriate mask. Indeed, no one can enter the courthouse without a mask. If someone has a medical condition that does not allow them to wear a mask, that individual will need to present a note from a physician providing proof of a medical condition that prevents him/her from wearing one. Witnesses will remove their masks when testifying, so that jurors may sufficiently observe and determine their demeanor, manner and credibility. As stated in Section III below, the witness seat is well beyond six feet from anyone else in the courtroom, and is therefore appropriately socially distanced.

II. ARRANGEMENT OF THE COURTROOM AND JURY DELIBERATION ROOM

Under this proposal, the Harley B. Gaston Public Forum of our courthouse, named after the late Harley Gaston, Jr., who had served as both county commissioner and later as district court judge, will serve as our jury trial courtroom, until such time as our Chief Justice and public health and safety officials determine that it is safe to revert back to trying jury cases in our conventional courtrooms. It is located on the second floor of the courthouse.

This is the only facility in the courthouse complex suitable by space and layout for a jury trial. We will therefore only be able to try one jury trial at a time. Normally, we have two superior jury courts going each week, either one criminal and one civil, or two criminal trials. In addition, our district court has a civil session once a month, including jury trials. However, our courthouse officials are confident we can work together in deciding the order of which cases should be tried.

III. LAYOUT OF COURTROOM

The public forum is an extremely large room, capable of seating 165 people under normal circumstances. The seats are movable chairs, not "pews" or bolted seats. Consequently, it is very easy to separate the juror seats six feet from each other in every direction in order to ensure appropriate social distancing. There will be enough room for a small number of socially distanced chairs closer to the main entrance to the public forum from the inside hallway of the building.

In addition to this main interior entrance, there is an exterior entrance at the front of the courthouse with a set of stairs leading up to the facility. There is also an emergency fire exit on the side opposite of the main interior entrance.

Since this room is designed for county commissioners to meet, there is a large raised dais at the north side of the room, where the commissioners sit during their meetings. As you face the dais, the presiding judge will sit at one end of this dais, about a third of the way from the left. The clerk of court will sit about two-thirds of the way down the dais, from the left. The witness will sit in a box-like station to the left of the dais as you are facing it. It is on the same floor level with, and therefore easily visible to the juror seats and counsel tables. The witness will testify using a microphone.

There are already working microphones at various seats on the dais for the commissioners to use during their proceedings. Therefore, the judge has a microphone at his or her seat. This facility is equipped with an elaborate technical audio-visual room at the south end of the room. There are two full-time county technicians who work out of this room, and even broadcast and televise commissioners' meetings. They have been extremely cooperative in this planning process, as have all county employees who have interacted with the court during this planning process. These officials have agreed to set up the public forum for the days when we will need to be using it for jury trials, and to break the room down on the alternate Tuesday evenings when the county commissioners will need the forum for the commissioners meetings. In the event the commissioners have a called meeting, the county should be able to let the courts know a week in advance, so there will be plenty of time to adjust the following week's trial schedule.

The court reporter will be stationed at a position socially distanced from the jurors, public, and the dais, at a location that has electrical outlets for the reporter's equipment and technology.

The counsel tables will be portable tables, placed side by side, with an appropriate distance between them. There will be matching "curtains" around the underside of both tables, to prevent the jury from seeing the leg restraints on a criminal defendant who is in custody. These defendants will be escorted to and from the courtroom in the absence of the jury. When the court is ready for jury selection, the bailiff will escort at least twelve jurors to the courtroom, which is on the second floor. We recognize that this will take longer than usual, because the jury assembly room is close to the courtrooms where jury cases are normally tried. Nevertheless, we accept this is part of the necessary realistic compromises we need to accept in order to resume jury trials.

As jurors are seated, they will remain in the courtroom until jury selection has concluded. As they are excused, the bailiff will have them escorted back to the jury assembly room at appropriate intervals. During recesses, the jury will be escorted by the bailiff to and from the courtroom.

The jury will deliberate in the jury assembly room. No jurors, nor anyone else will be present in that facility during the jury deliberations. The jury assembly room has restrooms and vending machines. It is large enough for all seated jurors to be socially distanced from each other.

When the jury has a question or has reached a verdict, they will notify the bailiff, who will be seated outside the jury assembly room for security, by knocking on the door or by activating a light switch. The bailiff will then escort the jury to the courtroom to have their questions addressed by the judge or their verdict announced in open court.

IV. SUMMONING AND EXCUSING JURORS

The jury coordinator will issue sufficient jury summonses to reasonably assure that a maximum of thirty-eight jurors will likely report for service, thirty-eight being the maximum number of jurors who can be appropriately socially distanced in the jury assembly room. Summoned jurors will report to the jury assembly room, located on the fourth floor. Prospective jurors shall be drawn pursuant to N.C. Gen. Stat. 9-5 and summoned pursuant to N.C. Gen. Stat. 9-10. For each session of superior court, the undersigned shall specify the number of jurors to be drawn to ensure an adequate number of potential jurors appear from which a trial jury can be selected. For most trials, a jury venire of thirty-eight persons should be sufficient. If more than thirty-eight jurors appear after the presiding judge has heard requests for excusal or deferment, the presiding judge shall: (1) have the jury coordinator randomly draw the names of enough potential jurors to reduce the number to thirty-eight, and then excuse those persons whose names are drawn; or (2) divide the potential jurors into panels and excuse one or more panels with instructions to call the jury coordinator's telephone number at a later time to ascertain if they are needed.

If it appears to the court that an insufficient number of potential jurors have reported from which to select a trial jury and if additional jurors have been summoned for the following day, the judge may begin *voir dire* with those jurors available and complete jury selection the next day.

Pursuant to N.C. Gen. Stat. 9-6 and the provisions of this order, the chief district court judge may consider and grant requests from potential jurors for excusal or deferment prior to the date that a jury session of superior court or district court convenes. On the day the session begins and thereafter, such requests must be submitted to the presiding superior or district court judge.

The jury coordinator shall include a letter with all jury summonses informing potential jurors that they must not report for jury duty if they are sick, if they have been diagnosed as suffering from COVID-19, if they are quarantined because of exposure to COVID-19, or if they are exhibiting any of the known symptoms of COVID-19. A list of those symptoms shall be included in the letter. The letter shall instruct such persons to telephone the jury coordinator as soon as practicable and explain their reasons for not reporting. The jury coordinator shall forward the names of such persons to the presiding judge or chief district court judge, who shall either excuse them from jury service or defer their service to some later session.

The jury summons or the letter shall inform prospective jurors of their right to request excusal or deferment under N.C. Gen. Stat. 9-6 and 9-6.1. In addition, the summons or letter shall inform prospective jurors that they may request excusal or deferment of their jury service if they believe they suffer from a compromised immune system or from some medical condition that renders them particularly susceptible or vulnerable to the effects of COVID-19. The summons or letter shall explain that they may submit their request as provided by N.C. Gen. Stat. 9-6.1, or by submitting the request to the chief district court judge by either email addressed to the jury coordinator at Harriett.Roberson@NCCourts.org, by written facsimile sent to her at 704-852-3125, or by telephoning the jury coordinator at 704-866-3007. The jury coordinator shall notify such prospective jurors of the disposition of their requests within no more than (2) business days

from receipt of the request, by a return telephone call or email if that information has been provided, or by mail if it has not.

Prospective jurors shall report directly to jury assembly room for orientation by the jury coordinator at least one hour before the commencement of any trial jury. Before entering the courtroom, they shall be screened for COVID-19 infection or exposure as set forth below.

V. SCREENING OF COURT PARTICIPANTS

All persons entering the Gaston County Courthouse currently are required to pass through metal detectors, and bailiffs ask any persons entering one of the courtrooms a series of questions concerning possible COVID-19 infections or exposure. Any person who indicates that he or she is experiencing symptoms of COVID-19 or may have been exposed to the virus is denied entry into the courthouse. These procedures shall continue after jury trials resume.

Additional screening procedures shall be implemented for all persons entering the public forum for a jury trial. Each day, bailiffs shall ask all such persons including jurors, court personnel, attorneys, litigants, and witnesses several more probing questions, including the following:

- Do you presently have a fever, cough, shortness of breath, chills, muscle pain, or a sore throat?
- Have you recently lost your sense of smell or taste?
- Are you presently awaiting the results of a COVID-19 test?
- Have you had contact with someone in the past 14 days who has tested positive for COVID-19 or who is under quarantine for exposure to COVID-19?
- Have you contacted your doctor or other health care provider during the past 14 days because you believed you had COVID-19 symptoms?
- Have you been directed to quarantine, isolate, or self-monitor at home by any health care professional in the past 14 days?

Bailiffs shall use a hand-held thermometer to take the temperature of all jurors entering the jury assembly room. Any juror who exhibits a temperature in excess of 100.4 F will be sent home and excused from service. All other jurors will receive a sticker to wear for the remainder of the day. In addition, bailiffs shall use a hand-held thermometer to take the temperature of all persons entering the public forum other than the jurors, whose temperature has already been taken. Bailiffs shall deny entry to any person who answers one of these screening questions affirmatively or who exhibits a temperature in excess of 100.4 F, and bailiffs immediately shall notify the presiding judge of that person's identity and role in the trial. The judge shall take such action as the judge deems appropriate. All those with an acceptable temperature will receive a sticker to wear for the rest of the day. (See Section VI. below.)

All court participants will be required to wear face masks at all times, pursuant to the Chief Justice's Emergency Directive 21 and earlier administrative order of this court. Masks will be

available at all public entrances to the courthouse, and a bailiff will provide a mask to any person who attempts to enter the court facilities without one. Hand sanitizing stations also will be placed in the public forum and in the jury assembly room, which is also where the jury will deliberate.

If the defendant in a criminal trial is in custody, the court, either on motion of either party or on its own motion, may order the defendant tested for COVID-19 at least three days prior to the commencement of the trial. In ruling on such a motion, the court shall consider the number and dates of any reported COVID-19 infections among the jail inmates and staff, the circumstances of the defendant's housing in the detention center, any physical symptoms the defendant is exhibiting, and any other factor the court in its discretion deems relevant. Following such a COVID-19 test, the defendant shall be held in quarantine until and throughout the trial.

The court also may order COVID-19 testing of any defendant who becomes symptomatic during a trial. If the defendant is in custody, the defendant shall be held in quarantine for the remainder of the trial. Should a defendant test positive for COVID-19 before a trial, the court should postpone the trial. Should a defendant become symptomatic or test positive for COVID-19 during a trial, the court should proceed as described in Section VI below.

VI. CONDUCT OF THE TRIAL

Calendar call will occur in the current respective courtrooms on Monday morning. By no later than noon on the Friday prior to any criminal session, the district attorney shall determine the order in which cases will be called for trial and shall send email notice of that order to all those attorneys with cases on the calendar. The State may deviate from that order by leave of the court. Those attorneys and their clients as well as all other attorneys and defendants on the calendar shall remain in a standby position for the remainder of the session, unless otherwise instructed or released by the court.

By no later than noon on the Friday prior to any civil session, the undersigned judge's trial court coordinator (TCC) shall notify the attorneys or *pro se* litigants of the order of trials appearing on the calendar and of the times that their motions and other nonjury matters will be heard. The TCC shall advise the attorneys or *pro se* litigants involved in the first trial of the session of the time they need to appear, and all other attorneys or litigants will be placed on a half-day standby notice unless otherwise instructed or released by the court.

The court and bailiffs will remind the jurors to practice social distancing at all times during the trial.

During trial, the court will encourage attorneys to publish their exhibits to the jury using the audiovisual display system in the courtroom, or by having exhibits displayed on a table, with jurors viewing the exhibits so displayed, one at a time, socially distanced from each other. The court will allow exhibits to be passed among the jurors only in compelling circumstances. If the

court allows exhibits to be passed among the jurors, the court will provide the jurors with latex gloves and hand sanitizer.

The presiding judge should attempt to avoid bench conferences during trial. The judge shall provide frequent opportunities for attorneys to confer privately with their clients during trial. The court on motion of any party or on its own motion may sequester witnesses, especially if necessary to avoid exceeding the maximum capacity of the courtroom. The Sheriff's office will provide appropriate locations for sequestered witnesses to wait their turn to testify. The bailiffs will assist the court in periodically counting the number of people in the courtroom.

The courthouse housekeeping staff shall thoroughly clean the courtroom during each lunch break and overnight recess.

VII. ADDRESSING COVID-19 SYMPTOMS OR EXPOSURE

Should a participant in a jury trial become symptomatic for COVID-19, test positive for COVID-19 during the trial, or report a known exposure to someone who has tested positive for COVID-19 during the trial, the presiding judge, after considering the role of the participant in the trial, the circumstances related to the participant's symptoms, positivity, or exposure, and the extent to which the participant may have been exposed to other persons involved in the trial, and after affording the parties an opportunity to be heard, must take one or more of the following actions:

- Direct the courthouse housekeeping staff to thoroughly clean and disinfect all areas of the courthouse complex the participant is known to have travelled through or occupied;
- Inform other persons with whom the participant is known to have had contact of their possible exposure, attempt to ascertain the duration and closeness of the contact, and ensure that those persons are familiar with the known symptoms of COVID-19;
- If the participant is a seated juror, excuse that juror from further participation in the trial, and, when required, replace that juror with an alternate;
- If the participant is an essential witness in a civil case and has not testified, determine whether it might be possible for the party calling the witness to offer the witness's testimony remotely or through a deposition;
- If the participant is a party to a civil case, determine whether the trial might proceed without the party's personal presence; or participate in the trial remotely or virtually.
- If the participant is the defendant in a noncapital criminal case, determine whether the defendant might waive his or her personal presence and participate in the trial remotely or virtually;
- If the participant is the courtroom clerk, court reporter, or bailiff, replace him or her with another person to perform that role;

- If the participant is one of the trial attorneys or the presiding judge, recess the trial for a reasonable period of time, or, after considering such factors as judicial economy and hardship to the parties, and after entering findings of fact and conclusions of law in the record, order a mistrial; and
- Make such other decisions and enter such other orders as may be reasonable and just under all the relevant circumstances, including a recess of the trial or an order of mistrial.


VIII. CONCLUSION

This jury trial resumption plan does not address every contingency that might arise in the course of a jury trial during the present COVID-19 pandemic. The presiding judge must remain vigilant for situations that jeopardize the health and safety of all participants. Moreover, the judge must not hesitate to order such measures as necessary and reasonable to mitigate the risk to the participants from the coronavirus.

Pursuant to the Chief Justice's Emergency Directive 22, this plan has been reviewed and approved by those Gaston County officials whose signatures appear below.

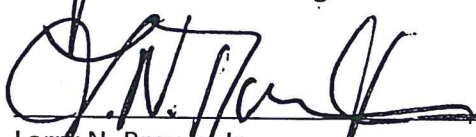
This plan shall become effective immediately upon the entry of this administrative order, and it shall remain in full force and effect until revoked or modified by the undersigned.


SO ORDERED, this the 30 day of September 2020.


 Jesse B. Caldwell, III
 Senior Resident Superior Court Judge

Reviewed and approved by:


 John R. Greenlee
 Chief District Court Judge


 Larry N. Brown, Jr.
 Gaston County Clerk of Superior Court


 R. Locke Bell
 District Attorney



Alan G. Cloninger
Gaston County Sheriff



Stuart Higdon
Gaston County Public Defender



Steve Eaton, MPH
Gaston County Public Health Director